

STATE OF NEW YORK

9349--A

2025-2026 Regular Sessions

IN ASSEMBLY

December 17, 2025

Introduced by M. of A. TORRES, SHIMSKY, GONZALEZ-ROJAS, REYES, GLICK, LEVENBERG, TAPIA, ZINERMAN, O'PHARROW, SIMON, LASHER, SANTABARBARA, LEE, STECK, ROMERO, BORES, McMAHON, CONRAD, CRUZ, P. CARROLL, ZACCARO, MORENO, SHRESTHA, RAGA, BUTTENSCHON, SAYEGH, FORREST, GRIFFIN, CLARK, COOK -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to prohibiting the use of surveillance pricing

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 349-a of the general business law, as added by
2 section 1 of part X of chapter 58 of the laws of 2025, is amended to
3 read as follows:
4 § 349-a. Pricing. 1. Definitions. As used in this section, the follow-
5 ing terms shall have the following meanings:
6 (a) "Algorithm" means a computational [~~automated~~] process that [~~uses a~~
7 ~~set~~] applies one or more sets of rules, including rules generated by a
8 natural person or by a computational process or system, to generate
9 outputs based on inputs and/or to define a sequence of operations.
10 (b) "Clear and conspicuous disclosure" means disclosure in the same
11 medium as, and provided on, at, or near and contemporaneous with every
12 advertisement, display, image, offer or announcement of a price for
13 which notice is required, using lettering and wording that is easily
14 visible and understandable to the average consumer.
15 (c) "Consumer" means a natural person who is seeking or solicited to
16 purchase, lease or receive a good or service for personal, family or
17 household use in New York state or by an entity domiciled in New York
18 state.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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1 (d) "Personal data" means any data that identifies or could reasonably
2 be linked, directly or indirectly, with a specific consumer or device.
3 "Personal data" shall not include location data that is used by a for-
4 hire vehicle as defined in section 19-502 of the administrative code of
5 the city of New York or as otherwise defined in local law or rule, or a
6 transportation network company vehicle as defined in section sixteen
7 hundred ninety-one of the vehicle and traffic law, solely to calculate
8 the fare based on mileage and trip duration between the passenger's
9 pickup and drop-off locations.

10 (e) "Dynamic pricing" means pricing that fluctuates [~~dependent~~] auto-
11 atically depending on conditions based completely or in part on one or
12 more algorithms, excluding price fluctuations based solely on bona fide
13 custom discounts.

14 (f) [~~"Personalized algorithmic~~] "Surveillance pricing" means [~~dynamic~~
15 ~~pricing set by an algorithm that uses personal data as defined in this~~
16 ~~section~~] pricing set completely or in part by an algorithm that uses
17 personal data to offer different prices to different customers for the
18 same goods or services and does not include bona fide custom discounts.

19 (g) "Bona fide discount" means a genuine reduction in price that is
20 referred to as such to consumers. Entities may reasonably interpret bona
21 fide discount to mean a genuine reduction from a contemporaneous or
22 recent reference price that is established absent of deceptive, abusive
23 and unfair practices as required by section three hundred forty-nine of
24 this article and 16 CFR 233.

25 (h) (i) "Bona fide custom discount" means a bona fide discount
26 consistent with federal, state, and local anti-discrimination laws
27 offered by an entity:

28 (1) to a consumer who affirmatively and knowingly enrolls in a loyal-
29 ty, membership or rewards program, including but not limited to by sign-
30 ing up for a mailing list, registering for promotional communication, or
31 participating in a promotional event, provided the discount is given to
32 all members of such loyalty program;

33 (2) based on a consumer's voluntary self-identification with a broadly
34 defined class of consumers including, but not limited to, military
35 veterans, active duty personnel, seniors, teachers, or employees,
36 provided freely and knowingly by the consumer for the sole purpose of
37 receiving the discount, and is not derived or inferred by the entity
38 from any other data;

39 (3) based solely on a consumer's prior purchase history with such
40 specific entity, provided that such purchase data is not paired,
41 combined, or cross-referenced with any other consumer data, except in
42 the case of an online marketplace; or

43 (4) in the case of the operator of an online marketplace, based solely
44 on a consumer's prior purchase history with the same independent, third-
45 party entity offering the good or service to which the bona fide
46 discount is applied, provided that such consumer purchase data is not
47 paired, combined, or cross-referenced with any other consumer purchase
48 data, including but not limited to data held by the operator of the
49 online marketplace related to any other third-party entities, and the
50 operator's own transaction data where the operator also offers goods and
51 services.

52 (ii) "Bona fide custom discount" does not include any reduction or
53 change in reference price based on personal data other than personal
54 data identified in subparagraph (i) of this paragraph.

55 (i) "Reference price" means the actual amount a consumer is required
56 to pay for any good or service, including mandatory fees or charges

1 necessary to receive such good or service except taxes or fees imposed
2 by a government, that is openly and actively offered to the public in
3 regular course of business for a reasonably substantial and recent peri-
4 od of time.

5 (j) "Consumer price" means the reference price with adjustments based
6 on bona fide discounts, including sales, coupons, promotions or other
7 discounts except bona fide custom discounts.

8 (k) "Online marketplace" means a public or semi-public website, online
9 service, online application, mobile application or other electronically
10 based or accessed platform through which a consumer in New York state
11 engages in the sale, purchase, payment, storage, shipping, or delivery
12 of a good or service that allows for, facilitates, or enables independ-
13 ent, third-party entities to engage in the sale, purchase, payment,
14 storage, shipping, or delivery of a good or service to a consumer in New
15 York state.

16 (l) "Independent, third-party entity" means any entity that engages in
17 the sale, purchase, payment, storage, shipping, or delivery of goods or
18 services to a consumer in New York state through an online marketplace.

19 (m) "Entity" means any natural person, firm, organization, partner-
20 ship, association, corporation, or any other entity domiciled or doing
21 business in New York state.

22 (n) "Service provider" means any person or entity that acts on behalf
23 of a regulated entity.

24 2. ~~[Any] Prohibition on certain pricing practices. (a) No entity [that~~
25 ~~sets the price of a specific good or service using personalized algo-~~
26 ~~rithmic pricing, and that directly or indirectly, advertises, promotes,~~
27 ~~labels or publishes a statement, display, image, offer or announcement~~
28 ~~of personalized algorithmic pricing to a consumer in New York, using~~
29 ~~personal data specific to such consumer, shall include with such state-~~
30 ~~ment, display, image, offer or announcement, a clear and conspicuous~~
31 ~~disclosure that states:~~

32 ~~"THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA"]~~ or
33 service provider shall set or adjust the reference price or consumer
34 price of a good using surveillance pricing, directly or indirectly, to a
35 consumer.

36 (b) No entity or service provider shall advertise, promote, label or
37 publish a statement, display, image, offer or announcement using
38 surveillance pricing to a consumer.

39 (c) No entity or service provider shall collect, use, retain, share
40 for valuable consideration, or disclose personal data for the purpose of
41 facilitating surveillance pricing to a consumer.

42 (d) No entity or service provider shall offer a bona fide custom
43 discount without clearly and conspicuously disclosing any eligibility
44 conditions or criteria for receiving or earning a bona fide custom
45 discount prior to offering the consumer such discount.

46 (e) No entity or service provider shall offer a bona fide custom
47 discount unless such discount is offered uniformly to any consumer who
48 meets the disclosed eligibility conditions or criteria.

49 (f) Any entity or service provider that uses dynamic pricing to vary
50 the price of any good or service more than once in a twenty-four hour
51 period shall clearly and conspicuously disclose the use of such dynamic
52 pricing, the frequency with which price changes may occur, and the
53 conditions that factor into the current dynamic pricing.

54 3. Exceptions. Nothing in this section shall apply to:

1 (a) A person, firm, partnership, association, or corporation, or agent
2 or employee thereof, who or that is subject to the insurance law or
3 regulations promulgated thereunder.

4 (b) Any financial institution or affiliate of a financial institution,
5 all as defined in 15 U.S.C. 6809, to the extent that:

6 (i) the financial institution or affiliate is subject to Title V of
7 the Gramm Leach Bliley Act (15 U.S.C. § 6801, et seq., as amended) and
8 the rules and implementing regulations promulgated thereunder; and

9 (ii) the good or service the financial institution or affiliate offers
10 or provides is based in whole or in part on the consumer's credit risk
11 based on the consumer's personal data.

12 (c) A financial institution as defined in subsection (f) of section
13 eight hundred one of the financial services law where the good or
14 service the financial institution offers or provides is based in whole
15 or in part on the consumer's credit risk based on the consumer's
16 personal data.

17 (d) [~~A price that is offered to a consumer who has an existing~~
18 ~~subscription-based contract or subscription-based agreement for goods or~~
19 ~~services with an entity and where such price is less than the price for~~
20 ~~the same good or service set forth in the subscription-based agreement~~
21 ~~or subscription-based contract] Pricing required or expressly authorized
22 by federal or state law.~~

23 (e) This section shall not affect prices or bona fide discounts set by
24 entities except to prohibit surveillance pricing and require disclosures
25 related to dynamic pricing in certain cases as set forth herein.

26 4. Enforcement. [~~Where the attorney general shall have reason to~~
27 ~~believe that there is an alleged violation of this section based upon,~~
28 ~~among other things, a consumer report of an alleged violation, the~~
29 ~~attorney general, in the name of the people of the state of New York,~~
30 ~~shall dispatch a cease and desist letter to the entity at issue, speci-~~
31 ~~fying the alleged violation or violations and the remedies to cure the~~
32 ~~violations within a designated timeline. Where, after receipt of the~~
33 ~~cease and desist letter and the expiration of such designated timeline,~~
34 ~~the entity continues to violate this section, an application may be made~~
35 ~~by the attorney general in the name of the people of the state of New~~
36 ~~York to a court or justice having jurisdiction by a special proceeding~~
37 ~~to issue an injunction, and upon notice to the respondent of not less~~
38 ~~than five days, to enjoin and restrain the continuance of such~~
39 ~~violations; and if it shall appear to the satisfaction of the court or~~
40 ~~justice that the respondent has, in fact, violated this section, an~~
41 ~~injunction may be issued by such court or justice, enjoining and~~
42 ~~restraining any further violation, without requiring proof that any~~
43 ~~person has, in fact, been injured or damaged thereby. Whenever the court~~
44 ~~shall determine that a violation of this section has occurred, the court~~
45 ~~may impose a civil penalty of not more than one thousand dollars for~~
46 ~~each violation] Any person in violation of this section shall be subject
47 to the remedies and penalties available pursuant to section three
48 hundred forty-nine of this article and, in addition, shall be subject to
49 a supplemental civil penalty of not more than five thousand dollars for
50 the first violation, and twenty thousand dollars for each subsequent
51 violation, or the profits earned by violating this section, whichever is
52 greater, which may be recovered in a civil action brought by the attor-
53 ney general. Whenever a court determines that a violation of this
54 section has occurred, the court may impose any other civil penalty
55 and/or remedy deemed appropriate by the court. Civil penalties imposed~~

1 under this section and recovered by the attorney general shall be used
2 to enforce consumer protection and data privacy.

3 5. The attorney general may promulgate such rules and regulations as
4 are necessary to effectuate and enforce the provisions of this section.

5 6. Construction. This section shall not be construed to limit any
6 other criminal or civil liability such entity may be subject to under
7 law.

8 § 2. Severability. If any clause, sentence, paragraph, subdivision,
9 section, or part of this act shall be adjudged by any court of competent
10 jurisdiction to be invalid, such judgment shall not affect, impair, or
11 invalidate the remainder thereof, but shall be confined in its operation
12 to the clause, sentence, paragraph, subdivision, section, or part there-
13 of directly involved in the controversy in which such judgment shall
14 have been rendered. It is hereby declared to be the intent of the legis-
15 lature that this act would have been enacted even if such invalid
16 provisions had not been included herein.

17 § 3. This act shall take effect on the one hundred eightieth day after
18 it shall have become a law. Effective immediately, the addition, amend-
19 ment and/or repeal of any rule or regulation necessary for the implemen-
20 tation of this act on its effective date are authorized to be made and
21 completed on or before such effective date.